

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9724 of 2015

Date of Decision:-24.03.2017.

Devender Kumar and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI**

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Present: Mr. R.S. Hooda, Advocate for the petitioners.

Mr. Sushil Gautam, DAG, Haryana.

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**P.B. BAJANTHRI, J. (Oral)**

1.) In the instant writ petition, petitioner has questioned the validity of the orders dated 11.9.2013, 12.8.2014 and 12.12.2014 vide Annexures P-4, P-5 and P-7, respectively. The petitioners while working as EASI at Palwal, there were allegations against them and others that they had demanded illegal gratification. In this regard, Superintendent of Police, Palwal issued a show cause notice and proceeded to hold an inquiry. On 7.7.2013, the Deputy Superintendent of Police, Hodel submitted inquiry report. Report reads as under:-

*Sir,*

*Case was inquired. During investigation it was found that on 03.06.2013 at 10.50 PM at night EASI Devender 405, C. Mehboob Khan No.430, C. Dharampal No.321, EHC Ashraf Khan No.270 CIA STAFF Hodel were in NIGHT PATROL at KARMAN BORDER Hodel and it is found that during patrolling bad behavior was shown after stopping the vehicle of*

*complainant. The report is presented for appropriate action.*

*Sd/- DSP, Hodel dated 07.07.2013.”*

2.) The Superintendent of Police taking consideration of the aforesaid report of the Deputy Superintendent of Police, Hodel proceeded to impose penalty on the petitioners after issuing notice to the petitioners and receipt of reply from the petitioners. On 11.9.2013, penalty of warning has been issued to the petitioners vide Annexure P-4 dated 11.9.2013. Perusal of the order do not disclose relating to consideration of the petitioners' contention. In the reply it is merely stated that “*That reply is found unsatisfactory*”. The imposition of penalty warning dated 11.9.2013 has been taken into consideration for the purpose of denial of ACP/promotional scale up to 10 years from the date of punishment imposed with reference to Government instructions dated 19.7.1973 read with 21.5.1973. The petitioners aggrieved by the decision of the Superintendent of Police, preferred an appeal before the Appellate authority. The appellate authority has rejected the petitioners' appeal stating that it is not maintainable under Rule 16.29 (1) of the Punjab Police Rules vide Anneuxre P-7 dated 17.12.2014.

3.) Learned counsel for the petitioners vehemently contended that there is no substance in the inquiry officer's report dated 7.7.2013. In the absence of discussion of evidence, it cannot be inquiry officer's report. Further action taken by the Superintendent of Police-disciplinary authority in imposing the penalty of warning is liable to be set aside. Consequently, denial of ACP/promotional scale up to 10 years vide order dated 12.8.2014 is liable to be set aside. So also the appellate authority's order dated

4.) Per contra, learned counsel for the respondents submitted that on the serious allegation of demand of illegal gratification by the petitioners was inquired and the inquiry officer has given his opinion. Based on the opinion of the Deputy Superintendent of Police-inquiry officer, the disciplinary authority-Superintendent of Police, Palwal proceeded to impose the penalty of warning. Consequently, the petitioner is not entitled for the benefit of ACP/promotional scale up to 10 years having regard to the Government instructions dated 19.7.1993 and 21.5.1973 etc. Further it was contended that the appeal is not maintainable as per Rule 16.29 (1) of the Punjab Police Rules. Therefore, no interference in respect of the impugned orders is called for.

5.) Heard learned counsel for the parties.

6.) No doubt the petitioners were subjected to disciplinary proceedings on the allegations that the petitioners and others were involved in the allegations of demand of illegal gratification. At the same time, it is to be noted that the same has not been inquired into properly by the inquiring officer so also specific charge has not been framed against the petitioners. Perusal of the inquiry officer's finding or opinion do not disclose any discussion of evidence adduced in the inquiry so as to say that it is an inquiry officer's report. In fact inquiring officer's report do not contain the ingredients of inquiry officer's report like charge evidence adduced in the inquiry and reliance of any documents. Nothing is forthcoming in the opinion or inquiry officer's report (Annexure P-3) dated 7.7.2013 of the Deputy Superintendent of Police-inquiry officer. Further examination of the disciplinary authority's order dated 11.9.2013, there is no consideration of the petitioners' reply what has been stated by the

disciplinary authority is “that reply is found unsatisfactory”. There is not even a single contention raised by the petitioner and the reply has been considered. In view of imposing the penalty of warning vide Annexure P-4, the petitioners have been denied the benefit of ACP/promotional scale up to 10 years with reference to Government instructions dated 19.7.1973 and 21.5.1973. For the purpose of extending the benefit of ACP, the State government has evolved Rules called 1998 ACP Rules and subsequently it has been replaced in the year 2008. Those are the statutory rules. For the purpose of extending or not extending ACP benefit to an employee, one must examine the relevant rules for the relevant period and not the instructions issued on 19.7.1973 and 21.5.1973. Those two instructions are only executive orders and the same cannot override 1998 or 2008 ACP Rules. Therefore, Annexure P-5 is contrary to 1998 and 2008 ACP Rules. However, insofar as Annexure P-7 by which the appellate authority has turned down the petitioners' appeal is concerned the same cannot be interfered in view of Rule 16.29 (1) of the Punjab Police Rules having regard to the fact that the petitioners have been punished by imposing the penalty of warning. In view of the above facts and circumstances, Annexure P-4, P-5 and P-7 are set aside reserving liberty to the respondents to initiate disciplinary proceedings in accordance with law if it is so warranted.

7.) Petition stands allowed.

**(P.B. BAJANTHRI)**  
**JUDGE**

**March 24, 2017.**

*sandeep sethi*

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.